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14 Allison Brown

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN DIVISION

18 Allison Brown,

19 Plaintiff,

20 vs.

21 Simon's Agency, Inc,

22 Defendant.

Case No.:

COMPLAINT FOR DAMAGES

FOR VIOLATIONS OF:

- 1. THE TELEPHONE CONSUMER PROTECTION ACT;**
- 2. THE FAIR DEBT COLLECTION PRACTICES ACT; AND**
- 3. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Allison Brown (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against Simon’s Agency, Inc. (hereafter “Defendant”) and
3 alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), repeated
8 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*
9 (“FDCPA”), and repeated violations of the Rosenthal Fair Debt Collection Practices
10 Act, Cal. Civ. Code § 1788, *et seq.* (“Rosenthal Act”).
11

12 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3), 15 U.S.C. §
13 1692k(d), Cal. Civ. Code 1788.30(f), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.
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15 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
16 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
17 where Defendant transacts business in this district.
18

19 **PARTIES**

20 4. Plaintiff is an adult individual residing in Hermosa Beach, California, and
21 is a “person” as defined by 47 U.S.C. § 153(39) and Cal Civ. Code § 1788.2(g).
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23 5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3), and is a
24 “debtor” as defined by Cal. Civ. Code § 1788.2(h).
25
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1 6. Defendant is a business entity located in Liverpool, New York, and is a
2 “person” as the term is defined by 47 U.S.C. § 153(39) and Cal Civ. Code §
3
4 1788.2(g).

5 7. Defendant uses instrumentalities of interstate commerce or the mails in a
6 business the principle purpose of which is the collection of debts and/or regularly
7 collects or attempts to collect debts owed or asserted to be owed to another, and is a
8 “debt collector” as defined by 15 U.S.C. § 1692a(6).
9

10 8. Defendant, in the ordinary course of business, regularly, on behalf of
11 itself or others, engages in the collection of consumer debts, and is a “debt collector”
12 as defined by Cal. Civ. Code § 1788.2(c).
13
14

15 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
16

17 9. Plaintiff is a natural person allegedly obligated to pay a debt asserted to
18 be owed to a creditor other than Defendant.

19 10. Plaintiff’s alleged obligation arises from a transaction in which property,
20 services or money was acquired on credit primarily for personal, family or household
21 purposes, is a “debt” as defined by 15 U.S.C. § 1692a(5), and is a “consumer debt” as
22 defined by Cal. Civ. Code § 1788.2(f).
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25 11. At all times mentioned herein where Defendant communicated with any
26 person via telephone, such communication was done via Defendant’s agent,
27 representative or employee.
28

1 12. At all times mentioned herein, Plaintiff utilized a cellular telephone
2 service and was assigned the following telephone number: 315-XXX-7074 (hereafter
3 “Number”).
4

5 13. Defendant placed calls to Plaintiff’s Number in an attempt to collect a
6 debt.
7

8 14. Defendant placed the aforementioned calls using an automatic telephone
9 dialing system (“ATDS”) and/or by using an artificial or prerecorded voice
10 (“Robocalls”).
11

12 15. Upon answering Defendant’s calls, Plaintiff was met with a prerecorded
13 message, instructing Plaintiff to dial one (1) to confirm her identity.
14

15 16. In or around December of 2016, during a live conversation, Plaintiff
16 demanded that Defendant cease calling her Number.
17

18 17. Despite Plaintiff’s unequivocal demand, Defendant continued to call her
19 Number using an ATDS and/or Robocalls at an excessive and harassing rate.
20

21 18. In addition, on multiple occasions Defendant called Plaintiff’s Number
22 prior to 8:00 a.m.
23

24 19. Defendant’s calls directly and substantially interfered with Plaintiff’s
25 right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff to suffer
26 a significant amount of anxiety, frustration, and annoyance.
27
28

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.**

20. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

21. The TCPA prohibits Defendant from using, other than for emergency purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

22. Defendant's telephone system has the earmark of using an ATDS and/or using Robocalls in that Plaintiff, upon answering calls from Defendant, heard a prerecorded message, instructing Plaintiff to dial one (1) to confirm her identity.

23. Defendant called Plaintiff's Number using an ATDS and/or Robocalls without Plaintiff's consent in that Defendant either never had Plaintiff's prior express consent to do so, or such consent was effectively revoked when Plaintiff requested that Defendant cease all further calls.

24. Defendant continued to willfully call Plaintiff's Number using an ATDS and/or Robocalls knowing that it lacked the requisite consent to do so in violation of the TCPA.

25. Plaintiff was harmed and suffered damages as a result of Defendant's actions.

26. The TCPA creates a private right of action against persons who violate the Act. *See* 47 U.S.C. § 227(b)(3).

27. As a result of each call made in violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages.

28. As a result of each call made knowingly and/or willingly in violation of the TCPA, Plaintiff may be entitled to an award of treble damages.

COUNT II

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT, 15
U.S.C. § 1692, et seq.

29. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

30. The FDCPA was passed in order to protect consumers from the use of abusive, deceptive and unfair debt collection practices and in order to eliminate such practices.

31. Defendant attempted to collect a debt from Plaintiff and engaged in “communications” as defined by 15 U.S.C. § 1692a(2).

32. Defendant communicated with Plaintiff at a time or place known to be inconvenient to the Plaintiff, in violation of 15 U.S.C. § 1692c(a)(1).

33. Defendant engaged in conduct, the natural consequence of which was to harass, oppress, or abuse Plaintiff, in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.

34. Defendant caused Plaintiff's phone to ring or engaged Plaintiff in telephone conversations repeatedly or continuously, with the intent to annoy, abuse and harass Plaintiff, in violation of 15 U.S.C. § 1692d(5).

35. The foregoing acts and/or omissions of Defendant constitute violations of the FDCPA, including every one of the above-cited provisions.

36. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

COUNT III

**VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT, Cal. Civ. Code § 1788, et seq.**

37. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

38. The Rosenthal Act was passed to prohibit debt collectors from engaging in unfair and deceptive acts and practices in the collection of consumer debts.

39. Defendant caused Plaintiff's telephone to ring repeatedly or continuously to annoy Plaintiff, in violation of Cal. Civ. Code § 1788.11(d).

40. Defendant communicated with Plaintiff with such frequency as to be unreasonable, constituting harassment, in violation of Cal. Civ. Code § 1788.11(e).

41. Defendant did not comply with the provisions of 15 U.S.C. § 1692, *et seq.*, in violation of Cal. Civ. Code § 1788.17.

42. Plaintiff was harmed and is entitled to damages as a result of Defendant's violations.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- C. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- D. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- E. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- F. Statutory damages of \$1,000.00 for knowingly and willfully committing violations pursuant to Cal. Civ. Code § 1788.30(b);
- G. Costs of litigation and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civ. Code § 1788.30(c);
- H. Punitive damages; and
- I. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

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DATED: May 22, 2017

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Allison Brown